IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.300/2007

M/s. Elegance Financials Pvt. Ltd.,
209, Nizmar Centre, Dr. Atmaram Borkar Road, Panaji, Goa 403 001 through its duly authorised Manager Shri Peter Baptist. ..... Petitioner.

V/s.

Mr. Shankar B. Toraskar,
Proprietor of M/s. Himachal Investments, Pershet, Guirim, Mapusa, Bardez, Goa. ..... Respondent.

Mr. Valmiki Menezes, Advocate for the petitioner.

Mr. D.V. Patkar, Advocate for the respondents.

CORAM : R.S. MOHITE, J.

DATE : SEPTEMBER 14, 2007.

ORAL ORDER :

This petition impugns an order dated 23.3.2007 passed by the Civil Judge, Sr. Division, Panaji in Execution Application No. 16/03/B. The execution proceedings were in respect of an award passed by Mr. W. K. Mangaokar, who was the sole arbitrator, on 7.2.2003. By the said award, the present respondent was directed to pay to the petitioner an amount of Rs.6,38,521/- with 18 % interest from 1.1.2003 till the date of the payment

The award further directed the present petitioner to hand over to the present respondent the shares listed in paragraph 11 of the said award. The shares as listed in para 11 were as follows :

(i) Tata Power – 100 shares,

(ii) Motorola – 1000 shares,

(iii) Silverline – 10 shares,

(iv) Gujarat Fluoro 200 shares; and

(v) Tata Finance – 300 shares.

It is not in dispute that 300 shares of Tata Finance were subsequently converted into 30 share of Tata Motors. In the execution proceedings, the present respondent who was not handed over the aforesaid shares as per the award, preferred an application for sale of 1000 share of Gujarat Fluoro and 30 shares of Tata Power which were required to be handed over to him. This application came to be allowed by the Court. Against that the present writ petition has come to be filed.

2. On 4.3.07, I had directed the petitioner to file an additional affidavit annexing documentary evidence indicating as to how and when the shares were dematted, annexing thereto current demat account in which the said shares were held. This order was passed by me because it was sought to contended by the petitioner that the shares were lying with the main broker and since he was a sub-broker, they were not in his power. The award which

the petitioner is seeking to challenge, in fact, clearly mentioned that these shares were held in the name of the present respondent. The customer agreement which is annexed to the petition also indicates that the petitioner is bound to hand over these shares to the present respondent. The petitioner cannot be allowed to approbate and reprobate.

3. I find no substance in this petition and, therefore, the same is rejected. It is directed that the execution proceedings will be taken up on priority by the executing Court. I am informed that the execution proceedings are next fixed for hearing on 18th September, 2007. Since the petitioner has contended in his affidavit that his broker is not giving him necessary details, and the shares are not in his custody or power, the executing Court will grant adjustment in respect of the value of the 1000 shares of Gujarat Fluoro and 30 shares of Tata Motor at the average rate prevailing on the NSE in respect of these shares as on 18.9.07. It is made clear that the adjustment is to be given only against the full decreetal amount along with interest. The issue as to whether the parties had agreed to any other arrangement, will be decided by the executing Court without being influenced by the observations made in this order. Writ petition is disposed of in the aforesaid terms.

R.S. MOHITE, J.

ssm